

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW MEXICO**

PATRICK JAMES MARTINEZ,

Petitioner,

v.

No. 1:21-cv-0860 KWR-SCY

UNITED STATES OF AMERICA,

Respondent.

ORDER CONFIRMING VOLUNTARY DISMISSAL

THIS MATTER comes before the Court on Petitioner's *pro se* Notice of Withdrawal (Doc. 2). Petitioner wishes to withdraw his 28 U.S.C. § 2241 habeas petition, which appears to challenge his federal assault conviction. The Court construes the filing as a notice of voluntary dismissal under Fed. R. Civ. P. 41(a)(1)(A)(i). That rule gives petitioners an absolute right to dismiss an action without prejudice "before the opposing party serves either an answer or a motion for summary judgment." Rule 41(a)(1)(A)(i). Respondent has not filed an answer. Therefore, the Court used the Notice, which is self-executing, to close this case. *Id.* The petition (Doc. 1) will not count as Petitioner's "first" habeas action, for purposes of the restrictions on second/successive habeas claims.

IT IS SO ORDERED.


KEA W. RIGGS
UNITED STATES DISTRICT JUDGE